DOCUMENT RESUME

ED 470 823 EC 309 277

AUTHOR	Gryphon, Marie; Salisbury, David
TITLE	Escaping IDEA: Freeing Parents, Teachers, and Students through Deregulation and Choice. Policy Analysis.
INSTITUTION	Cato Inst., Washington, DC.
REPORT NO	No-444
PUB DATE	2002-07-10
NOTE	25p.
AVAILABLE FROM	Cato Institute, 1000 Massachusetts Ave. NW, Washington, DC 20001 ($6). Tel: 800-767-1241 (Toll Free); Fax: 202-842-3490; Web site: http://www.cato.org.
PUB TYPE	Reports - Evaluative (142)
EDRS PRICE	EDRS Price MF01/PC02 Plus Postage.
DESCRIPTORS	Compliance (Legal); Conflict Resolution; *Disabilities; Educational Finance; *Educational Legislation; Elementary Secondary Education; *Federal Legislation; *Government Role; Individualized Education Prcgrams; *Parent Rights; School Choice; *Special Education
IDENTIFIERS	*Individuals with Disabilities Education Act

ABSTRACT

This policy analysis of the Individuals with Disabilities Education Act (IDEA) in the context of current reauthorization efforts concludes that IDEA's central failure is the complex and adversarial process required to determine the size and nature of each disabled child's entitlement to special services through the Individualized Education Program (IEP) process. It suggests that the IEP process has failed to ensure an appropriate education for disabled children while marginalizing parents and creating a barrage of compliance-drive paperwork. The adversarial nature of IDEA is seen as undermining relationships between parents and educators, and pitting parents, especially poorer parents, against schools in a struggle over limited resources. The paper also finds that IDEA has precipitated a financial crisis in schools with regulatory compliance and litigation costs soaking up educational resources and with incorrect labeling of students as disabled to qualify for funding. It urges establishment of portable benefits for parents and reform of special education to allow parents to control how their child's educational dollars are spent in the public or private school of their choice. (Contains 130 references.) (DB)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 470 823

Policy Analysis

No. 444 July 10, 2002

Escaping IDEA

Freeing Parents, Teachers, and Students through Deregulation and Choice

by Marie Gryphon and David Salisbury

Executive Summary

Originally enacted as the Education for All Handicapped Children Act, the Individuals with Disabilities in Education Act of 1975 was intended to guarantee each disabled child access to a free appropriate public education. The act is arguably the high-water mark of federal control of American education, regulating nearly all aspects of special education law and policy. IDEA is due for reauthorization this year.

With annual expenditures of about $50 billion, including $6 billion to $7 billion in federal contributions, special education is as troubled as it is costly. The occasion of IDEA's reauthorization has been marked by proposals intended to alleviate IDEA's myriad, universally acknowledged problems while improving educational outcomes for disabled children. For better or for worse, IDEA reform will dictate special education's prospects for the future.

IDEA's central failure is the complex and adversarial process required to determine the size and nature of each disabled child's entitlement to special services. Recognizing that the educational needs of disabled children differ widely, the act mandates that each child's "individual education plan," or IEP, be created out of whole cloth by his or her local school district in a series of meetings.

The process mandated by the statute has not only failed to achieve its purpose of ensuring an appropriate education to each disabled child. It has marginalized the parents it was intended to empower and has created a barrage of compliance-driven paperwork so overwhelming that special educators are driven to quit the profession.

Worse, IDEA's adversarial nature has undermined relationships between parents and educators, pitting parent against school in a bitter struggle over limited resources. Because the act's procedures require savvy, aggressive navigation, its benefits flow disproportionately to wealthy families, often leaving lower-income children underserved.

IDEA has also precipitated a financial crisis in schools. Regulatory compliance and litigation costs related to IDEA's failed dispute resolution framework are soaking up precious resources needed for education, while IDEA funding rules have encouraged incorrect labeling of many students as disabled.

The battle between parents and schools over each child's educational plan must end with a decisive victory for parents in the form of portable benefits. Special education should be reformed to allow parents to control how their child's educational dollars are spent in the public or private school of their choice.

Marie Gryphon is an education policy analyst and David Salisbury is director of the Center for Educational Freedom at the Cato Institute.

EC 309217

BEST COPY AVAILABLE 2

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

G. F. Taylor

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

✓ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

IDEA has created a legal and regulatory quagmire for special education that wastes resources, increases costs, and creates contention between parents and school officials.

Introduction

Since 1975, the law now known as the Individuals with Disabilities in Education Act has promised a "free appropriate public education" to all children with disabilities. Since that time, local public schools have been required to accept all disabled students and provide them with an educational plan in compliance with various federal procedural requirements. In return, the act provides for some discretionary federal funding to assist school districts to establish programs and procedures to meet the special needs of students with disabilities. Students with disabilities must be educated in the "least restrictive environment," meaning that they should be accommodated in regular classrooms where possible.

IDEA was part of an important effort in the 1970s to end discrimination against disabled children by states and local school districts. Disabled students' civil rights are protected by the Equal Protection Clause and Due Process Clause of the Constitution and by an anti-discrimination law commonly known as section 504.[1] When it became clear that disabled children were not being treated fairly under the law by public school systems,[2] Congress passed IDEA in an effort to provide a regulatory framework, or process, as well as some funding to help states ensure that disabled children would not suffer further discrimination.

IDEA is often conflated with the constitutional rights of disabled children by defenders of the status quo. They wrongly argue that changes to IDEA would amount to a denial of equal protection to students with special needs. In fact, IDEA is no more than a regulatory process, a mechanism for helping to achieve the goal of equity for disabled students. Policymakers should not hesitate to reexamine whether IDEA is effectively meeting this challenge today.

Though well intended, IDEA has created a legal and regulatory quagmire for special education that wastes resources, increases costs, and creates contention between parents and school officials. In spite of the fact that the act was intended to empower parents, even the most persistent parents find it difficult to navigate the procedures involved in special education under IDEA. Too often IDEA has marginalized the parents it was intended to empower.

Also, IDEA's emphasis on procedure has burdened special education personnel with excessive paperwork and meetings. That bureaucratic excess lowers morale among special education personnel and has impaired the recruitment and retention of special education teachers.

Worse, the inherently adversarial nature of IDEA's processes causes children to be treated like pawns in a litigious tug of war between parents, attorneys, and government officials. IDEA's reliance on due process mechanisms results in better outcomes for savvy, affluent parents than for parents who are less able to hire attorneys or otherwise navigate IDEA's complex procedures.

In addition to overregulating special education, IDEA is burdened with a flawed funding structure that has created incentives to overidentify students as learning disabled. The fastest growing segment of the special education student population is children diagnosed with a "specific learning disability." Financial incentives to identify more and more students as disabled inhibit efforts to prevent minor learning problems from becoming more severe. Assistant U.S. Secretary for Special Education and Rehabilitative Services Robert Pasternack highlighted this problem in his testimony before a congressional committee: "While many children are appropriately classified as having learning disabilities, we know, for example, that many are classified as such because of the lack of effective reading instruction . . . in the regular classroom."[3]

Many children are placed in special education primarily because they are poor readers. In this case, effective intervention and remediation should make it possible for children to catch up to their better reading peers.

Unfortunately, IDEA's effect on the academic achievement of such children has not been encouraging. The majority of students identified under IDEA continue in the program until they leave school. Instead of serving as a way for children to catch up to their peers, special education too often becomes what some commentators have called a "life sentence" for children who have fallen behind.

Finally, IDEA is a further expansion of federal spending and regulatory power into an area the Constitution does not authorize. As Roger Pilon explains, "From beginning to end, the [Constitution] never mentions the word 'education.' The people, in 1787 or since, have never given the federal government any power over the subject—despite a concern for education that surely predates the Constitution."[4]

Yet today almost every aspect of a child's interaction with local schools is dictated by federal policy once the child is identified as disabled. Although it has long been recognized that those working closest to a child can make the best educational decisions, IDEA has replaced local control with federal governance. Not only is this less effective, it runs counter to constitutional authority. Other than ensuring that students' constitutional rights are upheld, the federal government lacks authority to become involved in what should be, under the Constitution, a local matter.[5] IDEA has wandered far from the federal mission to secure equal protection for special needs children by mandating a smothering, procedurally driven system that hampers the efforts of special education teachers and students.

States should consider turning down the federal funds supplied in return for complying with IDEA, as the costs of compliance exceed the benefits and delay needed reforms. Alternatively, as authorization for IDEA expires at the end of 2002, Congress has the opportunity to correct many of the current defects of special education law. Reauthorization of IDEA without fundamental reform is the wrong idea. It is time to consider a new approach for families with children with disabilities.

This paper proposes fundamental reforms to improve educational results for students with disabilities. Policymakers should carefully evaluate the experience of the past 25 years. We can't afford to be hesitant about making changes, even radical changes, to the act, if those changes will benefit children and families.

The Process: IDEA's Dispute Resolution Model

The regulatory structure mandated by IDEA has not changed significantly since the original act became law in 1975. The fundamental purpose of the act was to end discrimination by public schools against disabled children, but the act was intended to further other goals as well. Recognizing, for instance, that children with disabilities vary widely in terms of needs and limitations, the act sought to achieve an individualized program for each disabled child. IDEA's authors also sought to involve and empower parents in the choices made about the education of their children.

Like many laws passed at the time, IDEA sought to further its goals by creating a comprehensive and detailed series of regulations providing for meetings, record making, negotiation, due process hearings, administrative review, alternative dispute resolution, and legal remedies.[6] At each of those steps, IDEA sought to create a balance of power between public educators and parents, requiring the involvement of both at every step of the complex IDEA-mandated bureaucratic process designed as a series of forums for resolving disputes presumed to crop up between the two interest groups. For this reason, IDEA is a "dispute resolution model" for deciding on and delivering special education services.[7]

Initial Identification

Before receiving special education services, a child must be referred by his or her parent or teacher to special education experts employed by the school district for evaluation.[8] Because of

IDEA has wandered far from the federal mission to secure equal protection for special needs children by mandating a smothering, procedurally driven system that hampers the efforts of special education teachers and students.

a heavy backlog, the evaluation process frequently takes many months,[9] although states are required to make good faith efforts to identify and serve disabled children under IDEA's "child find" requirement.[10] School districts are required to seek out disabled children in private, as well as public, educational settings.[11]

The Individual Education Plan

IDEA requires development of an individual education plan (IEP) for each child identified by a school district as disabled. Formal meetings must be held to develop the IEP and must include the child's special education teachers, general education teachers, and parents; the child him- or herself, if appropriate; and any experts, consultants, or attorneys called upon by either the parents or the school.[12] Written notice of those meetings, as well as all proposed actions under the IEP, is required by IDEA and must include a statement of procedural safeguards, including information about independent evaluations, parental consent, due process hearings, civil actions, and attorney's fees.[13] The notices must be provided at several junctures, including when a child is referred to special education, when a child is reevaluated, before any IEP meeting, and whenever a complaint about a child's education is filed.[14]

The IEP itself must include a written diagnosis of the child's problems, a detailed account of the special services he or she will receive, and statements of short- and long-term objectives and goals, as well as a record of all procedures followed in its production.[15] The IEP process must be repeated annually for each child identified as disabled under IDEA. During the annual meetings the IEP is reviewed and revised.[16]

Due Process

IDEA mandates a complex administrative review of all disputes related to the IEP of a disabled child. If a parent disagrees with any part of the school district's IEP, he or she may request a formal appeal hearing before an ostensibly "impartial officer," who will adjudicate the dispute.[17] In practice, the hearing officer may be a retired school district employee, either a special educator or a special education administrator.[18] If the parent is dissatisfied with the result of this initial hearing, he or she may (if the state has a two-tiered review system) appeal directly to the state board of education or its designated hearing office, which may uphold or reverse the district hearing officer's educational decision or remand the matter to an earlier stage of due process.[19]

The due process hearings, both local and (if available) state, resemble trials in many respects, with formal procedures, witnesses' testimony, opening and closing arguments, and a verbatim transcript.[20] It is not at all uncommon for the due process stage of an IDEA dispute to take a year or longer.[21] Attorney Jonathan A. Beyer comments, "Hearings may extend for weeks, months and years only to return to a different stage of due process before ever achieving closure."[22]

Litigation

Parents who have successfully exhausted the preceding requirements and remain dissatisfied may sue their school district in state or federal court for failure to provide a "free, appropriate public education," or FAPE.[23] FAPE is a term of art that includes compliance with IDEA's processes, as well as an ill-defined minimum level of educational service.[24]

The court will review all of the evidence collected during the previous administrative processes as well as any additional evidence introduced by the parties and make a decision based on "the preponderance of the evidence."[25] If the plaintiff substantially prevails in court, the court may award attorneys' fees in addition to monetary and injunctive relief.[26]

It is not at all uncommon for the due process stage of an IDEA dispute to take a year or longer.

Problems with IDEA

Virtually everyone is unhappy with the way IDEA currently performs, though few have clear ideas about how to reform the system.[27] Below are a few of IDEA's most significant failures.

Unnatural Enemies: The IEP as Opening Salvo

IDEA's single worst feature is its propensity to turn would-be allies—parents and special educators—into the equivalent of fighting dogs, specially trained to see one another as the enemy throughout the cumbersome processes mandated by the act. At fault is the dispute resolution model (including the IEP, due process hearing, and litigation) for determining a child's educational program.

The dispute resolution model, under which parents can walk away with either very little or a great deal depending on their aggressiveness and the quality of representation they have, nurtures an artificially adversarial relationship between the two groups by splitting their interests. Parents want as many services as possible for their child, while school districts are driven by budgetary constraints to try to shortchange every parent who doesn't make trouble.[28] The result is a system that rewards posturing and threatening rather than collaboration. IDEA parent Ellen Tuttle complains, "I have to be a steamroller in my daughter's life to get her the help she needs."[29]

Procedural requirements intended to empower parents, such as a seemingly endless series of meetings to which they must be invited, have failed to live up to their promise. Many IDEA parents feel intensely marginalized by IDEA's processes, which are driven by school district employees bent on preserving the special education nest egg for future litigation-generated emergencies.[30]

School personnel usually arrive at the required meetings with a plan to present to parents as a fait accompli.[31] They have superior knowledge of the ins and outs of IDEA and often intimidate parents who want a real role in the process with professional jargon and procedural hardball. One scholar analyzing multiple IEP meetings observed:

> Of the 14 conferences observed, in only one instance was the meeting actually devoted to specifying goals and objectives jointly between the parent and educators. It is noteworthy that in this instance the father was a psychologist.[32]

Accordingly, the IEP process has become, not a meaningful interaction between parent and teacher about the needs of a child, but an opportunity for the school district to prepare a defense against a future lawsuit.[33] One legal expert has remarked, "You can fight over placement all you want, but if you want to win, you need to control the content of the IEP."[34] Education scholar Guy Benveniste concurs that IEP reports are "less designed to address the problems of the child than to defend the district against potential attack."[35]

Parents often feel blindsided by a cabal of special educators, professional administrators, and other experts acting on the advice of school district attorneys. The *Washington Post*'s Jay Mathews recounted one particularly shocking case:

> Marvin and Amy Adams of Weatherford, Texas, said that when they objected to the unannounced, and thus apparently illegal, presence of a school district lawyer at one meeting about their daughter Callie, who is autistic, the lawyer refused to leave.
>
> After about 20 minutes of back and forth arguing, during which my husband was called a "liar," the lawyer and each and every one of the [school district] employees just got up—en masse—and walked out of the room. The lawyer asked if the Adamses were leaving too, Amy said, and before they could answer the lawyer said to them, "We'll just get someone down here to remove you."[36]

While that example is extreme, it is clear that the IEP process intended by IDEA's authors to be cooperative is nothing of the sort. School districts have the upper hand in this game most of the time: they have special education experts on staff to fill the IEP record with opinions in support of the district's plan, while those parents who can

The IEP process has become, not a meaningful interaction between parent and teacher about the needs of a child, but an opportunity for the school district to prepare a defense against a future lawsuit.

afford to do so must hire their own experts to contradict the school district's experts if the parents wish to be taken seriously.

Even parents possessed of the money and know-how to successfully navigate the system see the IEP process as an extended early settlement conference for a legal dispute, rather than a cooperative effort to educate a child. Not surprisingly, many of the parents who have navigated the process most successfully are themselves attorneys.[37] Clint Bolick, a successful public interest lawyer with the Institute for Justice and the parent of a child with a borderline diagnosis of learning disabled, wrote of IDEA, "If it's this perverse for me, I wonder how the system works for parents who, unlike me, do not sue bureaucrats for a living."[38]

The dispute resolution model mandated by IDEA inevitably pits teacher and school against parent and child in a battle over both educational philosophy and scarce resources.

The dispute resolution model mandated by IDEA inevitably pits teacher and school against parent and child in a battle over both educational philosophy and scarce resources. The ever-present threat of occasional outsized payoffs required by court decision means that special educators must jealously guard resources during the IEP process, rather than determine in good faith what is best for any individual child.[39]

Thus, the tragedy of IDEA's dispute resolution model is the loss to parents of the good counsel of a trusted special education expert about what is right for their child.[40] Too often, parents lack needed information about available options, both inside and outside the public school system. They need a fiduciary motivated to look out for their child's best interests. IDEA forces special educators to deceptively present cheap and easy strategies to parents as "appropriate," and that often destroys the relationship between the two groups. IDEA attorney Kevin Lanigan observes:

> Such [due process] proceedings tend to foster mutual perceptions of dishonesty between the parties and often result in deep suspicion and hostility between parents and school officials. While litigation is inherently adversarial, the level of antipathy in post-due process relationships appears to us generally to be much higher [in IDEA disputes] than in other areas of our education practice.[41]

IDEA parent Kathy Davis has lamented: "In regard to the IEP process itself, I wish it stood for 'Individual Encouragement to Parents.' If we could change it, I would change it. In many ways this public law has become our enemy."[42]

The Procedural Compliance Burden

In addition to destroying trust between parents and educators, IDEA's regulatory structure and decisional law nurture an obsessive focus on procedural compliance. Compliance, not educational outcome, is regarded as the premier measure of success for a special education program.[43] Education analyst Kalman R. Hettleman notes that "special education nationally is mired in a compliance model of accountability" under which procedural conformity is valued over academic progress.[44]

Already endemic in IDEA's statutory structure, which offers more in the way of procedural protections than in substantive guarantees, the focus on process has been worsened by court interpretations of the act. The Supreme Court has established a two-part test for deciding an IDEA lawsuit: (1) have all of the procedural requirements of the act been met by the school district, and (2) if so, is the student's IEP reasonably calculated to provide educational benefit to the student?[45]

Lower federal courts have exacerbated the procedural focus by relying largely on the so-called Rowley test's procedural prong to adjudicate IDEA disputes. Understandably reluctant to decide pedagogical questions on which they lack expertise, judges emphasize procedural compliance in their opinions. IDEA scholars Joyce O. Eckrem and Eliza J. McArthur write of the relative importance of the procedural prong of the Rowley test:

> As a practical matter, another line of cases interpreting the first prong of

> the Rowley test—compliance with procedures—began to supercede the "benefit" standard, because determining compliance is much easier than determining "benefit" under any standard.[46]

Because the substantive "educational benefit" prong has been so forgiving, while IDEA's myriad procedural requirements are so demanding, good IDEA attorneys know that the way to prevail in an IDEA dispute is to litigate the procedural compliance issue. Once a court has found a school district to be out of compliance, virtually any substantive remedy may be obtained. One IDEA litigant recovered the costs of a private special education day school in a remote community, the cost of renting an apartment near the school, travel costs so that the family could periodically be reunited at the primary residence, and attorney's fees.[47] The remedy was awarded, not because the litigant proved the school district's educational plan was substantively inappropriate, but because the district had failed to comply with IDEA's written notice requirements at one step of the compliance maze.[48]

Special education attorneys Eckrem and McArthur write:

> The certainty with which a procedural flaw could destroy FAPE [a free, appropriate public education] reverberated throughout the special education community. No school district attorney would recommend pursuing a dispute with a parent through the Act's administrative hearing process and the courts, without first carefully analyzing the District's compliance status. And no parent would formulate a case on the basis of a "benefit" analysis without vigorously pursuing the District's procedural compliance.[49]

Because it is a matter of financial survival for school districts to comply with IDEA's myriad requirements, every procedural step must be painstakingly documented for potential use in due process hearings and subsequent litigation.[50] The paperwork generated as a result of the IDEA compliance maze is so out of control that it is one of the few issues on which parents, reformers, and the special education establishment agree.[51] The Counsel for Exceptional Children, an advocacy organization for disabled students, found after conducting a national survey of special educators that "the tyranny of paperwork overshadows the thoughtful planning needed for individualized student instruction."[52]

A recent federally funded survey revealed that excessive paperwork and meetings were the top two reasons special educators left their jobs, exacerbating an existing shortage of qualified teachers.[53] Some special education teachers are said to spend about 50 to 60 percent of their time filling out the forms required by law or by their district's defensive legal strategy.[54]

Indeed, so convoluted are IDEA's regulatory requirements that a National Council on Disability member recently testified before Congress that all 50 states and the District of Columbia remain out of compliance with the act, despite school districts' best efforts to comply.[55] At least two states, Hawaii and Maryland, are now operating their programs under the direct supervision of a federal judge.[56] Without a fundamental rethinking of the IEP and administrative review processes, IDEA compliance is unlikely to become less expensive or less burdensome.

The Litigation Explosion

Finally, IDEA has generated a wave of expensive and chancy litigation, enriching litigation attorneys while draining school districts of needed resources. Parents who have navigated their way through the preceding procedural mess are invited to sue their school district for failing to provide a FAPE.[57] Aggressive parents, often rightly angered by the school district's unresponsive bureaucracy and out of patience with IDEA's picayune due process requirements, have done so. The result has been that a "whole cottage industry of

IDEA has generated a wave of expensive and chancy litigation, enriching litigation attorneys while draining school districts of needed resources.

Savvy, affluent parents who are comfortable with attorneys and confident expressing their views to educators are receiving an inordinate share of the total resources available for special education.

lawyers and advocates has grown up to help parents get what they want out of the school system."[58]

Partly to blame is IDEA's vague statutory language concerning the extent of a disabled child's entitlement to special education services.[59] Justice Rehnquist opined in the landmark IDEA case, *Board of Education v. Rowley*, that the statute's definition of appropriateness "tends toward the cryptic rather than the comprehensive."[60] The *Rowley* Court, while establishing the two-part procedural and substance inquiry that has played a role in the increasing procedural focus of litigants, declined to create a clear test for determining whether a given student's IEP is "appropriate." Federal courts have largely clung instead to a case-by-case approach to the substantive issue.[61]

The heart of the problem with substantive review of a child's IEP is that judges are ill suited to determine what educational program is "appropriate" for a disabled child by any standard.[62] Even professional educators often cannot agree on what constitutes an "appropriate education."[63] For that reason, IDEA decisions are often inconsistent, unpredictable, and therefore unfair.[64] Education scholar Paul Hill has called IDEA the "high water mark of resource allocation by court decision."[65]

IDEA litigation has been on the rise in recent years, as more and more children have been identified as disabled.[66] As federal appellate courts fashion vague and conflicting standards for unwieldy IDEA cases, education attorneys collect large fees from all parties, draining schools and parents of funds needed for education.

IDEA's Inequities

To listen to IDEA's critics is to be confronted by seemingly inconsistent condemnations. Some critics insist that IDEA still too often provides insufficient services to disabled children, "warehousing" them in separate classrooms where little is taught. Other critics will indignantly recount stories of disabled children receiving obscenely generous benefits at public expense, draining resources from public school districts that could be better spent on the general education curriculum. In fact, both groups are correct. Provision of special education under IDEA is schizophrenically too generous and too stingy.

Arcane procedural rules, vague legal standards, and frequent recourse to litigation have produced a two-tiered system of special education. Savvy, affluent parents who are comfortable with attorneys and confident expressing their views to educators are receiving an inordinate share of the total resources available for special education.[67] Other children with special needs receive much less, often less than they need.[68] Indeed, IDEA has been likened to "a huge regressive tax—helpful to those wealthy enough to take advantage of it and often harmful to those who are not."[69]

As the social stigma associated with disability has decreased, affluent parents have come to realize that a classification as "learning disabled" can have substantial benefits for their children, from free tutoring or note-taking services to extra time on tests.[70] Bolick points out, "In affluent Greenwich, Connecticut, nearly one in three students has the learning disabled, or LD, label and accompanying benefits."[71]

While children from families with more than $100,000 in annual income make up only 13 percent of SAT test takers in a given year, they constitute 27 percent of those who receive special accommodations on the SAT.[72] Affluent parents are also the most likely to obtain private school placements for their disabled children.[73]

One special education study concluded:

> Because the degree of choice extended to special-needs students depends in large part on the parents' pushiness, it should come as no surprise . . . that in many school districts there is not one special education program but two, separate and unequal. This dual system, keyed to parents' differing levels of savvy and persistence, unlawfully deprives some special education students of essential services while providing others with a premium private education at public expense.[74]

As long as the type and cost of each disabled child's benefit are determined under IDEA's failed dispute resolution model, IDEA's chronic inequities will be impossible to alleviate.

Skyrocketing Costs

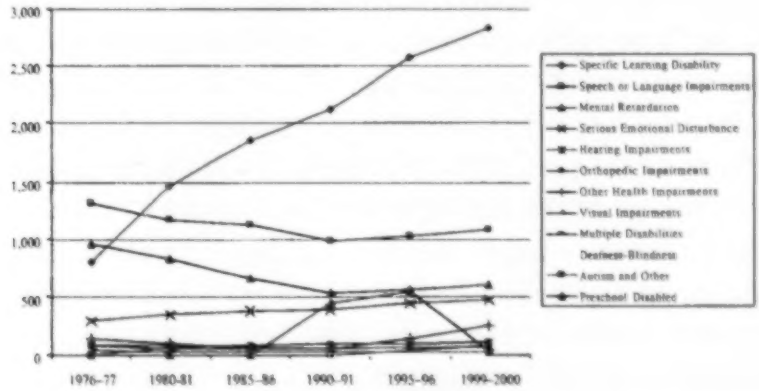
The amount spent on special education services as a percentage of the total education budget has risen sharply since IDEA was passed. In 1977 services for disabled students accounted for 16.6 percent of total education spending. Today the $78.3 billion spent on special education students at the local, state, and federal levels accounts for 21.4 percent of the $360.2 billion spent on elementary and secondary public education in the United States.[75] The number of school-aged children receiving special education services also increased during that period, from about 8.5 percent in 1977–78 to nearly 13 percent in 1999–2000.[76] The implication is that the growth in special education spending is primarily due to the increased number of students receiving special education services.

The growth of special education can be attributed largely to a sharp rise in the number of children categorized as learning disabled. The number of children so identified grew by an extraordinary 242 percent between 1979 and 1997 (Figure 1). The number of children in all the other disability categories combined increased by only 13 percent during the same period. Today, learning disabled children account for nearly 50 percent of children in special education (Table 1).

Several factors have contributed to the growth in the number of children diagnosed as learning disabled. Often, a school district has a financial incentive to identify disabled children under IDEA, since those children bring additional federal and state funds into the school. Many of those children may be low achieving, but not disabled in any traditional meaning of the word. This incentive may be extremely powerful in poorer districts that serve large populations of low-achieving students, as each student placed in special education maximizes the procurement of state and federal funds needed to augment low local tax revenues.[77] In addition, parents often seek admission of their children to special education programs because of the increased resources that are available.[78]

Often, a school district has a financial incentive to identify disabled children under IDEA, since those children bring additional federal and state funds into the school.

Figure 1
Number of Children in Federally Supported Programs for the Disabled, by Category of Disability (thousands)



Source: U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics, 2001* (Washington: U.S. Department of Education, 2002), p. 66, Table 52.

BEST COPY AVAILABLE

Table 1
Percentage of Children Aged 6 through 21 Served under IDEA by Category of Disability, 1976–77 and 1999–2000

Disability	1976–77	1999–2000
Specific learning disabilities	21.5	45.7
Speech and language impairments	35.2	17.4
Mental retardation	26.0	9.7
Emotional disturbance	7.7	7.6
Hearing impairments	2.4	1.1
Orthopedic impairments	2.4	1.1
Other health impairments	3.8	4.1
Visual impairment	1.0	.04
Multiple disabilities	na	1.8
Deafness, blindness	na	<.05
Autism and traumatic brain injury	na	1.3
Developmental delay	5.3	.03
Preschool disabled	na	9.4

Source: U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics, 2001* (Washington: U.S. Department of Education, 2002), p. 66, Table 52.

Note: na = not available.

Parents often seek admission of their children to special education programs because of the increased resources that are available.

Compounding this problem is the fact that the condition known as SLD (specific learning disability) lacks a clear, specific definition, making it possible to categorize almost any low- or under-achieving child as SLD. Commenting on the various behaviors or conditions that can be used to categorize a child as SLD, experts have opined that nearly 80 percent of American school children qualify as disabled under one definition or another.[79] Because SLD is the only disability now defined by statute instead of administrative regulation, the Department of Education is limited in its ability to curb abuse of the designation.[80]

One unfortunate byproduct of the incentive to overidentify students under IDEA is lack of early intervention for minor learning problems. Because of this, minor problems that could have been prevented if identified and dealt with at the right time grow into intractable problems that require more aggressive and expensive treatment. This is particularly true of learning disabilities. Today, learning disability is the most frequently identified type of disability among American children in public schools. There is ample evidence to suggest that millions of children who are currently receiving long-term and expensive special education services would not need such services if their instructional needs had been addressed at an early stage. According to G. Reid Lyon of the National Institute of Child Health and Human Development, the category "learning disabled" has become a "sociological sponge to wipe up the spills of general education."[81]

Most identified learning disabilities have to do with reading failure—approximately 80 percent of children with a learning disability have difficulty primarily with reading.[82] Difficulty with reading affects a student's performance in almost every other subject area, so a reading difficulty leads to failure in other academic areas, feeding a cycle of academic frustration and personal failure. A student who is a poor reader goes on to become a poor student overall. The unfortunate thing is that many of these problems are preventable and these children would not be experiencing difficulties today if they had received effective

reading instruction in the early grades.[82] In addition, experts point out that learning disabled has become a catchall category for the instructional failures of earlier grades.[84]

Congress amended IDEA in 1997 to remedy the problem of overidentification, changing from a funding formula based on student count to one based partially on total student enrollment. This should help to alleviate the problem of financial incentives for labeling children as disabled. The 2000–01 school year was the first year to fall under the revised funding formula so the effects of these changes have not yet been seen.[85]

The IDEA-mandated bureaucratic process also imposes enormous transaction costs on school districts. Due process hearings, IEP meetings, record keeping, and administrative reviews all require that districts commit resources to defending the school's practices and placements. Funds that could be better spent if devoted to the education of a child must be used to defray procedural and legal costs.

Economists at the American Institutes for Research estimate that about $5 billion is spent annually on special education administration, an estimate that does not include any general education administrative expenses for disabled students.[86] Of that amount, $4 billion is spent on central office special education administration, rather than school-level administration. This $4 billion spent nationally on activities occurring nowhere near children covers "administration, coordination, staff supervision, monitoring and evaluation, due process, mediation, litigation support, assessment of student progress, and eligibility determination."[87]

At least half of the foregoing central office activities are made necessary by IDEA's dispute resolution framework, which demands due process, mediation, and litigation expenditures as well as the monitoring and assessment regimens that make it possible for school districts to win cases. School districts can ill afford to use limited special education resources to pay these substantial procedural and legal costs.[88]

Moreover, at individual schools special education teachers are spending nearly half their time on compliance-related meetings and paperwork.[89] Accordingly, the act's compliance demands cost each school district many millions of dollars annually at the school level as well. In the city of Baltimore alone, annual IDEA regulatory compliance costs were recently estimated at $28 million.[90] The American Institutes for Research has conservatively estimated combined school-level and central office expenditures related to assessment, evaluation, and IEPs at $6.7 billion nationally, a figure that does not even appear to include most legal expenses.[91]

The financial crisis precipitated by IDEA in public school districts around the country has lent urgency to the reform debate. Summarizing the financial problems facing IDEA, Los Angeles–area superintendent James Fleming stated: "If you criticize [IDEA] you will be publicly vilified as anti-handicap. But what is happening now will absolutely destroy public education before the next decade is out."[92]

Low Academic Gains

Because IDEA funding to states is contingent on regulatory compliance, states have unsurprisingly focused on compliance and process rather than education. There are no rewards for states that actually demonstrate progress in educating their disabled students, nor are there sanctions against states where students fail to show reasonable academic achievement. States are judged solely on the degree to which procedural regulations are satisfied and the right paperwork processed correctly and on time.

Even the national assessments that have been designed to look at special education programs collect data only on program characteristics, not the academic gains of special education students.[93] What is known about the academic gains of children in special education programs is not encouraging. Economist Eric Hanushek and his colleagues revealed that the average educational improvement for children diagnosed with

Reading problems are preventable and children would not be experiencing difficulties today if they had received effective reading instruction in the early grades.

learning disabilities and placed in special education was 0.04 standard deviations in reading and 0.14 in math.[94]

Although those numbers suggest that students receive some benefit from special education, the gains are very small—not enough to noticeably affect a learning deficit let alone eliminate it. For that reason, the bulk of these children remain perpetually in special education programs, never catching up to their higher achieving classmates. According to Lyon, "Gains are so small that [special education] children are not closing the gap" between themselves and other students.[95]

The only way to resolve the problems is to replace IDEA's dispute resolution model with genuine private choice for parents of disabled children.

Achievement of students in Baltimore, Maryland, is reflective of the low achievement gains made by special education students. Last year, for example, only 9.6 percent of special education third grade students scored satisfactory or better on the Maryland state performance tests in reading. By grade eight, the percentage of students scoring satisfactory or better had dropped to 1 percent. Even more telling is that the gap in test scores between special education students and regular students widened over time. For example, in grade two, the percentage of general education students with passing scores in reading was 44 percent; only 24 percent of special education students had passing scores. In grade six, 31 percent of general education students had passing scores but only 8 percent of special education students did.[96]

Other studies have documented that special education instructional-remediation programs are not effective for children who are poor readers. For example, one study reported that 80 percent of poor readers in special education remediation made no measurable gain during the school year.[97] The lack of progress by poor readers in special education is unfortunate, since proven methods exist for effective remediation in reading. For example, Joseph Torgesen and his colleagues conducted tests of well-designed reading remediation programs including the Lindamood Auditory Discrimination in Depth Program and "Embedded Phonics." Those programs showed far superior results with children who had made little or no progress in the preceding 16 months in special education. After an eight-week intervention, 40 percent of those children were able to return to regular classes (compared with the normal rate for leaving special education of 5 percent).[98]

School leaders themselves admit that special education students are not coming close to reaching their academic potential.[99] Other experts have pointed out that special education services are often ineffective because they are provided too late to children who are already far behind, particularly in the case of reading.[100]

Solution: Deregulation and Parental Choice

Virtually all concerned parties are very dissatisfied with the way IDEA has functioned.[101] The spectacular failure of current IDEA processes to serve students, parents, and teachers was summed up by one IDEA parent:

> Over the last eleven years we have seen what a legacy has been created. I can't imagine how it must feel to be part of the creation of this sad, sad mess—where children are pariahs, their families are the enemy, "special" means "can't be done," and education has long been forgotten . . . for the record, the culture of the Special Education Administration is a closed-mouth, non-collaborative, non-responsive, anti-family fortress. . . .[102]

The roadblock to meaningful reform so far has been a reluctance to rethink the Byzantine procedural structure that forms the very heart of the act. The only way to resolve the problems of skyrocketing transactional costs, adversarial relationships between parents and teachers, and inequity is to replace IDEA's dispute resolution model with genuine private choice for parents of disabled children. The battle between parents and educators must end with a decisive victory for parents, in the form of portable benefits.

One state, Florida, has already has already moved in that direction. Under legislation passed in 1999 and expanded in 2000 and 2001, children with physical or mental disabilities are eligible for tuition scholarships that can be used to attend any public or private school of the family's choice. Last year, just over 4,000 disabled children chose to use scholarships to attend a private school rather than their neighborhood public school.[103] (See Appendix for a listing of some private schools that serve children with disabilities.)

To obtain a McKay scholarship, parents do not have to demonstrate that their disabled child is lagging behind academically or is not making progress on his or her IEP. Parental dissatisfaction is enough for a disabled child enrolled in a public school to be eligible. The Florida program simply makes special education benefits portable, allowing parents, rather than school district administrators, to decide which school should receive the educational funds already being spent on a child. There is no additional cost to the state.

Though the Florida program is a big step in the right direction, the state is still hampered by IDEA's procedural requirements, which it is not empowered to eliminate. Although Florida's private schools do not themselves fall under IDEA's jurisdiction,[104] parents of disabled students in Florida must still wend their way through the IEP and due process procedures mandated by the act and spend at least a year following the IEP in the public school system before electing to take advantage of a scholarship.[105]

Even then, a parent's aggressive and savvy performance in the IEP fight will pay off--the amount of a McKay scholarship is determined by "the base student allocation in the Florida Education Finance Program *multiplied by the appropriate cost factor for the educational program that would have been provided for the student in the district school* to which he or she was assigned, multiplied by the district cost differential."[106] Accordingly, the parent who most effectively pressures the state for the most expensive services during the IEP process will be rewarded with a large scholarship amount under the Florida program, while similarly disabled children may receive less.

Because financial incentives still require schools and parents to fight through the IEP and due process procedures in Florida, inequities and waste persist in the state's special education program. Rep. Rick Keller (R-Fla.) commented on the continuing burden IDEA places on the innovative Florida program,

> No matter which school I visit in Orlando, the message from the teachers is always the same--our bloated government regulations are burying them in paperwork, wasting precious hours that could be spent helping disabled children learn.[107]

For state-level choice-based reforms such as Florida's program to live up to their potential, they must be freed from IDEA's burdensome processes.

States Should Escape IDEA's Failed System by Refusing Federal Funds

States can implement choice-based, deregulatory reforms of special education at once by turning down the federal funds associated with IDEA. The act is a funding statute, meaning that only states that accept its federal funds have to comply with its mandates.[108] Congress originally envisioned covering 40 percent of special education costs with federal dollars, but despite larger-than-expected dollar increases from the federal government, the federal portion of special education funding has sometimes fallen below 15 percent.

States should compare the amount of federal funding they receive with the sums they must spend, not on education, but on procedural compliance with IDEA. Many states will find that turning down federal funds in favor of unilateral reform will produce savings rather than additional state costs. For the year 1999-2000, Congress appropriated about $4.5 billion in basic and preschool IDEA funds.[109] The same year, the American Institutes for Research estimates that $6.7 billion was spent at the state and

States can implement choice-based, deregulatory reforms of special education at once by turning down the federal funds associated with IDEA.

Many states will find that turning down federal funds in favor of unilateral reform will produce savings rather than additional state costs.

local level for "assessment, evaluation and IEP related activities."[110] Though choice-based reform would not eliminate assessment expenses entirely, they could be very significantly reduced. Moreover, the $6.7 billion estimate does not appear to include many due process and litigation expenses, nor does it include fee awards to successful plaintiffs' attorneys.

Careful fiscal analysis should convince many states that it is time to opt out of this failed program by refusing its federal funds in favor of state law reforms that eliminate IDEA's dysfunctional procedural requirements. In addition to probable financial gains, states would enjoy increased autonomy and massive regulatory and legal relief. As described hereafter, parents and students in states that implement choice-based reform would experience greater educational freedom and opportunities and face fewer bureaucratic barriers.

Alternatively, Congress Could Create a Choice-Based Reform Option for States

Although ideally all responsibility for special education should lie with the states, state lawmakers may find it politically impossible to turn down federal funds to pursue independent reform strategies, even if they determine it would be good public policy to do so. Alternatively, Congress could amend IDEA to allow states to opt into a reformed special education system, which would eliminate the failed dispute resolution model entirely in favor of a state-administered, largely state-funded system based on parental choice.

A state would opt into the program by creating a matrix of disability categories and monetary contributions designed to represent the total average cost of both general and special services required to educate a child in each category of disability. The state would then create a menu of special education services no less comprehensive than those currently available in each school district and their estimated cost per child per hour or per semester, as appropriate. The matrix and menu would be submitted to the U.S. Department of Education and approved for a five-year period if reasonably calculated to provide the state's disabled children with adequate resources to obtain an appropriate education.

Parents in "reform states" would be allowed to select from the menu of available special services offered by public schools, up to the amount of the child's defined monetary contribution under the matrix, with the advice of special educators or anyone else the parents felt was appropriate. Or the parent could take his or her child's total educational allowance to a private school of choice.

Because parental choice would replace negotiation as the method of determining a child's educational plan, reform states would be exempt from all of the IEP and due process requirements of IDEA and would no longer be subject to civil suit for failure to provide an "appropriate" education. The sole remaining potential dispute would be the accuracy of the child's diagnosis and, accordingly, the size of his or her monetary contribution. Reform states would be required to create rules for genuinely independent binding arbitration of disputes related to the diagnosis of a child covered by IDEA.

The end result for a state opting into reform would be a state-administered, largely state-funded portable benefits plan.

Reform States Will Avoid IDEA's Worst Problems

Reform states, whether they have unilaterally reformed or opted-in to a federally authorized deregulatory plan, will save tens of millions of dollars that are now devoted to procedural compliance, legal posturing, and litigation. If even half of the annual $6.7 billion devoted to "assessment, evaluation and IEP related expenditures" were eliminated, $3.35 billion could be saved nationally on those items alone. States and parents would also save millions more on IDEA attorneys' fees and other legal expenses. Those currently wasted sums could be devoted instead to educational expenses, improving both special education and general education.

Although disputes will continue to crop up over a given child's disability category,

"the majority of cases [under current IDEA law] have focused on the individual child and the adequacy of the program proposed by the school district to meet that child's needs."[111] Accordingly, IDEA-related disputes in reform states should become far more rare. In addition, the issue of whether a disability has been correctly diagnosed is far simpler than that of whether a specific educational program conceived by a school district is "appropriate" for a given child. The disputes that remain to be resolved through binding arbitration will thus be far shorter, simpler, and cheaper than present litigation.

The educational choices available in reform states should also be effective in increasing the quality of education available to most disabled children. Choices are particularly beneficial to special education students because of the variety of disabilities they struggle with and because of significant recent and ongoing advances in special education. Public institutions by their nature often change too slowly to keep pace with rapidly evolving techniques and technologies in special education,[112] and in many areas of special education, even experts lack consensus about which pedagogical techniques are most effective.[113]

Parents have better information and better incentives to make optimal decisions for their children than do school districts.[114] As Kotler observes, "Parents better understand their child's abilities and potential than a professional who typically makes judgments based on a very brief acquaintance with the child."[115] Although parents often lack the professional expertise of special educators, they have an incentive to seek out the very best sources of information and advice. A public school district will never be similarly motivated to spend weeks and months researching educational alternatives for a single child. Accordingly, choice-based reform should result in better educational outcomes for disabled children.

Parental choice in reform states will also relieve parents of their current Hobson's choice: accept an objectionable plan created by the school district or face the financial and personal costs of a potentially years-long hearing and appeals process.[116] Similarly, the elimination of the IEP and due process regimens will free special educators from the meetings and paperwork that have come to dominate their days, allowing them to focus once again on teaching children.

Reform states will alleviate the problem of overidentification of children as having disabilities, a phenomenon that has contributed to IDEA's increasing costs. Although the 1997 amendments to IDEA may prove effective in reducing financial incentives for states to over-identify minor disabilities, many states still distribute funds to school districts on the basis of numbers of disabled children. By tying an agreed level of funding directly to each disabled child, and giving each family control over how those funds are spent, reform states will eliminate the remaining tendencies of school districts to compete for extra funds through overdiagnosis.[117]

Also important will be the increased equity with which special education resources will be distributed in reform states. IDEA parents will not be sorted, as they now are, into separate camps of winners and losers on the basis of their personal educational attainment, financial resources, or litigious nature. Each parent will receive the same defined monetary contribution, depending on type of disability, to be spent on the educational resources the parent believes will be most helpful to his or her disabled child. Reform states will see a shift in resources away from procedural compliance costs, litigation costs, and a small number of savvy or lucky parents and toward lower-income children with disabilities who are currently underserved.

Perhaps most critical, replacement of the dispute resolution model of IDEA with parental choice in reform states will restore trust between parents and educators, whose interests are no longer misaligned. With the size of a child's benefit no longer in question, teachers can collaborate with parents to determine how the child's allotment might best be spent. If the two cannot agree, the

Although parents often lack the professional expertise of special educators, they have an incentive to seek out the very best sources of information and advice.

parent is welcome to find another teacher or school with which to work. As with other consensual fiduciary relationships—banker and investor, attorney and client—the new teacher-parent relationship will be built on trust, honesty, and results. Successful special educators and schools will be those that serve parents and children well.

The District of Columbia Should Become an Example of Reform

Congress should spearhead state-level reform by implementing a system of choice for District of Columbia parents of special needs children. The District can serve as an inspiration for states to take advantage of the reform opportunity, reducing bureaucracy and empowering parents.

Special education accounts for a third of total education spending in the District, although only about 10 percent of students are classified as disabled.[118] The District's public schools are projected to have $79 million in cost overruns by September 30, 2002, and the high cost of special education is a "major problem" contributing to the overspending, according to Council Chair Linda Cropp.[119]

Despite huge sums expended on special education in the District, few state programs are as notorious for waste and abuse. The *Washington Times* recently noted that "the District's program is not very helpful to children with special needs, and its management is lousy and costly."[120] Corruption is a problem; recent news reports indicate that a network of IDEA attorneys and former District school employees has been simultaneously operating law firms, testing centers and even private schools, filing IDEA suits against the District for inadequate services, demanding that their clients be assigned to their own programs, and then overbilling the District for services.[121]

Congress should spearhead state-level reform by implementing a system of choice for District of Columbia parents of special needs children.

Moreover, disabled children in the District of Columbia suffer disproportionately from the inequities that plague the system nationally. Parents who navigate the system successfully may obtain extremely generous benefits. Private placements for their children account for more than a third of the District's $167 million special education budget, although they are less than one-sixth of all disabled children in the District.[122] The District pays for some students to be transported to and from private schools as far away as Delaware.[123]

By contrast, the District's remaining special needs children are served in the district public school system, despite the fact that "programs in public schools have not been very helpful" to many disabled children, according to special education psychologist William Boston.[124] Robert Worth recounts the story of one child caught in the District's public special education system:

> When [Saundra] started having trouble in the first grade, she was placed—like many kids in D.C.—into a dead-end classroom where she learned nothing. In her case, it was a class for the mentally retarded. It took six years for a teacher to notice that Saundra wasn't retarded at all. Now she's catching up, but probably not fast enough to attend college next year. "You can never make up for that lost time," says one social worker who has helped Saundra.[125]

Editorial columnist Deborah Simmons, looking at the waste and inequities of the District's current special education system, has opined, "Wouldn't it be nice if parents of special education children, regardless of their child's 'special' circumstances, were offered vouchers?"[126] Indeed, equalizing the amount available to each child with the same diagnosis, and making those benefits portable, would go a long way toward resolving the unfairness of the District's current system.

Congress should develop, or require the District leadership to develop, a deregulatory, choice-based reform plan for special education. Such reform will both improve one of the nation's most nonfunctional special education systems and demonstrate the benefits of choice-based reform nationally.

Conclusion

Some federal lawmakers are currently pushing for large funding increases for IDEA without fundamental reform, but increasing funding for a failed regulatory approach would be counterproductive to the special education reform effort. Keeping the federal contribution small (recently around 10 to 15 percent of special education costs) would encourage states to reform their special education programs individually, discarding the federal money as not worth the compliance and litigation costs associated with IDEA. By contrast, additional federal funding without reform will indefinitely stymie this healthy impulse by bribing states to continue to use IDEA's failed dispute resolution model.

States should choose to adopt reformed systems based on deregulation and parental choice. Alternatively, Congress could reform IDEA to offer states a meaningful way out of the old system, based on respect for individual parents and families. Parental choice through portable benefits offers disabled children their best chance to obtain meaningful educational opportunities. Raising a disabled child is difficult enough without fighting protracted annual battles with her teachers, her school, and its lawyers about the programs and services she needs most. Lawmakers should act now to allow every parent of a disabled child the meaningful choices now reserved to a lucky few.

Appendix: Private Schools Serving Children with Disabilities

A growing number of private schools serve children with disabilities or other special needs. According to the *Directory for Exceptional Children*, there are more than 2,500 private schools and clinics serving children with physical and learning disabilities.[127] More than 160,000 special education students are currently being educated in private facilities, paid for by either public or private funds.[128]

This appendix includes only a sampling of schools that accept children with special needs or that specialize exclusively in serving such children. The idea that private schools pass by children with behavioral, emotional, physical, or educational problems is untrue. In fact, many public school districts rely on private providers to teach the severely disabled as well as many at risk and learning disabled students. According to Department of Education statistics, more than 2 percent of the nation's learning disabled student population—120,000 students—are placed by local school boards in private schools.[129]

It is also useful to note that many foreign countries have a successful track record in making use of private providers of special education. In fact, the European Agency for Development in Special Needs Education has concluded that the countries that are most successful at helping the learning disabled are those that use multiple service providers.[130]

Private Service Providers for Special Education Students

Paladin Academy
Nobel Learning Communities
1615 West Chester Pike
West Chester, PA 19382-7956
1-800-288-1236
(Locations in FL, CA, NC, WA, VA, and NV)

Devereux Santa Barbara
P.O. Box 1079
Santa Barbara, CA 93102
(805) 968-2525

ASAH
Lexington Square
2125 Route 33
Hamilton Square, NJ 08690
(609) 890-1400
asahinc@aol.com

Hillside Children's Center
1183 Monroe Ave.
Rochester, NY 14620
(716) 256-7500

Institute for the Redesign of Learning
1137 Huntington Dr.
South Pasadena, CA 91030

Parental choice through portable benefits offers disabled children their best chance to obtain meaningful educational opportunities.

(213) 341-5580

Mercy Special Learning Center
830 South Woodward St.
Allentown, PA 18103
(215) 797-8242

National Association of Private Schools for Exceptional Children
1522 K St. NW, Suite 1032
Washington, DC 20005
(202) 408-3338

EduCare Learning Center
1965 51 Street NE
Cedar Rapids, IA 52402
1-877-255-8133

Kids 1, Inc.
11 Lexington Ave.
East Brunswick, NJ 08816
(908) 422-3838

Huntington Learning Centers
496 Kinderkamack Rd.
Oradell, NJ 07649
1-800-CAN-LEARN
(Located throughout the U.S.)

Success Lab Learning Center
1033 West Van Buren, Suite 700
Chicago, IL 60607
312-492-8730

Scientific Learning Corporation
300 Frank H. Ogawa Plaza, Suite 500
Oakland, CA 94612-2040
1-888-665-9707

Outsourcing and Staffing Services

Total Education Solutions
1137 Huntington Drive
South Pasadena, CA 91030
1-877-TES-IDEA
(323) 257-0284 (fax)

In-School Tutoring

Sylvan Learning Systems, Inc.
1 Penn Plaza
New York, NY 10119
1-888-7SYLVAN
www.sylvanlearning.com

HOSTS Learning
8000 NE Parkway Drive, Suite 201
Vancouver, WA 98662
1-800-833-4678

Kaplan Inc.
Corporate Office
888 7th Ave.
New York, NY 10106
1-800-KAP-TEST
www.kaplan.com

At Risk Students

Corrections Corporation of America
10 Burton Hills Blvd.
Nashville, TN 37215
(800) 624-2931
(615) 263-3140 (fax)
www.correctionscorp.com

Cornell Corrections
Cornell Abraxas Leadership Academy
2915 North 3rd St.
Harrisburg, PA 17110- 2101
(210) 499-5509
www.cornellcorrections.com

Rescare
10140 Lin Station Rd.
Louisville, KY 40223
www.rescare.com

Wackenhut Corrections Corporation
4200 Wackenhut Drive
Palm Beach Gardens, FL 33410-4243
1- 800-666-5640
(561) 691-6659 (fax)
wccinfo@wcc-corrections.com
http://www.wackenhut.com/fr-wcc.htm

Alternative Education Resource Organization
417 Roslyn Road
Roslyn Heights, NY 11577
(516) 621-2195
jmintz@igc.apc.org

Father Flanagan's Boys Home
Boys Town, NE 68010
(402) 498-1305

Ombudsman Educational Services
1585 North Milwaukee Ave.
Libertyville, IL 60048
(708) 367-6383

Options for Youth
2529 Foothill Blvd., Suite 1

La Crescenta CA, 91214
(818) 542-3555
Ramsay Youth Services, Inc.
Columbus Center
One Alhambra Plaza
Suite 750
Coral Gables, FL 33134
(305) 569-6993
www.ramsay.com
Children's Comprehensive Services
Keystone Education and Youth Services
3401 West End Ave Suite 400
Nashville, TN 37203
(615) 250-0000
(615) 250-1000 (fax)
Richard M. Milburn High School
14416 Jefferson Davis Hwy.
Suite 12
Woodbridge, VA 22191
(703) 494-0147
Sobriety High School
5250 West 73rd Street, Suite A
Edina, MN 55439
(612) 831-7138
Woodbury Reports Inc.
P.O. Box 1107
Bonners Ferry, ID 83805
(202) 267-7758
loi@woodbury.com
http://www.strugglingteens.com/
Youth Services International
2 Park Center Court Suite 200
Owings Mills, MD 21117
(410) 365-8600
ysiweb@youthservices.com
Maplebrook School
P.O. Box 118 North Road
Amenia, NY 12501
(914) 373-8191
Rebound
1700 Broadway, Suite 2200
Denver, CO 80290-2201
(800) 444-9717
The National Catholic Education Association
1077 30th St. NW, Suite 100
Washington, DC 20007
(202) 337-6232
nceaadmin@ncea.org

Notes

1. U.S. Constitution, Fourteenth Amendment; and Rehabilitation Act of 1973, Pub. L. 93-112, sec. 504, 87 Stat. 394 (codified, as amended, at 29 U.S.C., sec. 794).

2. A federal court found that Pennsylvania statutes excluding disabled children from public schools lacked a rational basis. *P.A.R.C. v. Commonwealth of Pennsylvania*, 343 F. Supp. 279, 283 (1972). Also applying rational basis review, another federal court held that a District of Columbia provision excluding disabled children from school was unconstitutional. *Mills v. Board of Education*, 348 F. Supp. 866, 875 (1972).

3. Robert H. Pasternack, Testimony on IDEA reauthorization before the Senate Committee on Health, Education, Labor, and Pensions, 107th Cong., 1st sess., March 21, 2001, www.ed.gov/Speeches/03-2002/20020321.html.

4. Roger Pilon, "Ignoring Constitutional Limits," in *The Rule of Law in the Wake of Clinton*, ed. Roger Pilon (Washington: Cato Institute, 2000), p. 39.

5. See *The Cato Handbook for Congress: 107th Congress* (Washington: Cato Institute, 2001), pp. 133–40.

6. "IDEA originated during a jurisprudential era in which the United States Supreme Court demonstrated a preference for protecting welfare claims through formal procedural rights." Jonathan A. Beyer, "A Modest Proposal: Mediating IDEA Disputes without Splitting the Baby," *Journal of Law & Education* 28 (1999): 37.

7. "The trouble [with IDEA] is that it pits the interest of every single disabled child against the broader interest of the school." Robert Worth, "The Scandal of Special Ed," *Washington Monthly*, June 1999.

8. Individuals with Disabilities in Education Act, U.S.C. 20, sec. 1414(a). Cited hereafter as IDEA. See also Terry Jean Seligman, "An IDEA Schools Can Use: Lessons from Special Education Legislation," *Fordham Urban Law Journal* 29 (2001): 762–63.

9. Worth notes that initial identification and reevaluation processes are frequently delayed: "Despite all those bureaucrats hired to evaluate and place students, more than 250 students in DC haven't received an initial evaluation, and almost 2,200 are overdue for their second evaluation."

10. IDEA, sec. 1412(a)(3).

11. Ibid., sec. 1412(a)(10)(A)(ii).

12. Tyce Palmaffy, "The Evolution of the Federal Role," in *Rethinking Special Education for a New Century*, ed. C. E. Finn et al. (Washington: Thomas B. Fordham Foundation and Progressive Policy Institute, 2001), p. 7. See also *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1485 (9th Cir. 1992).

13. *Union School District v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1993), cert. denied, 115 S. Ct. 428 (1994).

14. IDEA, sec. 1415(d); and Kevin J. Lanigan et al., "Nasty, Brutish . . . and Often Not Very Short: The Attorney Perspective on Due Process," in *Rethinking Special Education for a New Century*, p. 217.

15. Ibid.

16. IDEA, secs. 1413(a)(11), 1414(a)(5).

17. Palmaffy, p. 8. See also *Board of Education v. Rowley*, 458 U.S. 176, 182 (1982).

18. Martin A. Kotler, "The Individuals with Disabilities in Education Act: A Parent's Perspective and Proposal for Change," *University of Michigan Journal of Law Reform* 27 (1994): 386.

19. Palmaffy, p. 8.

20. Lanigan et al., p. 219.

21. Lanigan et al. describe the typical due process hearing schedule. Ibid., p. 225.

22. Beyer, p. 42.

23. IDEA, sec. 1415(i)(2)(A).

24. *Rowley* at 206–7.

25. IDEA, sec. 1415(i)(2)(B)(3). Despite statutory language implying a de novo review of the merits, courts have accorded some deference to the determinations of special education administrators on the question of appropriateness. The Supreme Court has held that "due weight shall be given to these [administrative] proceedings." *Rowley* at 206.

26. IDEA, sec. §1415(i)(3)(B).

27. Palmaffy, p. 19.

28. One commentator sums up the effect of IDEA's dispute resolution model on parent-school relations: "IDEA assurances of a free and appropriate education for each child with disabilities then engender a zero-sum game for special education resources, in which parents are poised to compete for public resources to obtain more educational resources for their child." Beyer, pp. 40–41.

29. Quoted in Jay Mathews, "Class Struggle," *Washington Post Online*, February 5, 2002. Education writer Tyce Palmaffy also observes: "The threat of a hearing . . . is an essential element in the relationship between districts and parents because it raises the stakes in disputes over placement." Palmaffy, p. 16.

30. Stephen A. Rosenbaum, "When It's Not Apparent: Some Modest Advice to Parent Advocates for Students with Disabilities," *U.C. Davis Journal of Juvenile Law & Policy* 5 (2001): 181.

31. Kotler, p. 364.

32. Ibid., p. 397 n. 124, citing Sue Goldstein et al., "An Observational Analysis of the IEP Conference," *Exceptional Children* 46 (1980): 282.

33. The Council for Exceptional Children has stated that IEP-related paperwork "is designed to keep the school system out of a lawsuit" rather than to improve the quality of a student's educational plan. Kalman R. Hettleman, "Still Getting It Wrong: The Continuing Failure of Special Education in the Baltimore City Public Schools," Abell Foundation, Baltimore, 2002, p. 11.

34. Jean B. Crockett, "Special Education: The Least Restrictive Environment and the 1997 IDEA Amendments and Federal Regulations," *Journal of Law & Education* 28 (1999): 558, citing Jeffrey Champagne, "LRE: Decisions in Sequence." Paper presented at Symposium of Annual Conference of the National Association of Private Schools for Exceptional Children, 1992, p. 14.

35. Quoted in Rosenbaum, p. 198 n. 62.

36. Mathews.

37. See, for example, Kotler, passim. See generally Lisa Osborne, "The Reality of Parents Acting as Attorneys for Their Disabled Child," *Journal of Law & Education* 29 (2000): 249.

38. Clint Bolick, "A Bad IDEA Is Disabling Public Schools," *Education Week*, September 5, 2001.

39. One education researcher observed this conflict of interest all too clearly during the IEP process: "A private school placement for a particular child, while indicated, would not be recommended because of the expense. The core evaluation team's position would be that the child's needs could be met within the public school system, although the principal very vocally opposed the return of the child to his school." Kotler, p. 368.

40. Even experts generally favorable to IDEA agree: "When people look to the legal system as a first

resort, relationships between schools and parents can quickly become adversarial, sometimes to the detriment of the child's education." American Youth Policy Forum and Center on Education Policy, *Twenty-Five Years of Educating Children with Disabilities: The Good News and the Work Ahead* (Washington: American Youth Policy Forum and Center on Education Policy, 2001), p. 56.

41. Lanigan et al., p. 227.

42. Quoted in Rosenbaum, p. 159.

43. Wade F. Horn and Douglas Tynan, "Time to Make Special Education 'Special' Again," in *Rethinking Special Education for a New Century*, p. 34.

44. Hettleman, "Still Getting It Wrong," p. 12.

45. *Rowley* at 206–7.

46. Joyce O. Eckrem and Eliza J. McArthur, "Is the Rowley Standard Dead? From Access to Results," *U.C. Davis Journal of Juvenile Law & Policy* 5 (2001): 206.

47. Ibid., p. 206, citing *Union School* at 1526.

48. Ibid.

49. Ibid.

50. One school district loses the equivalent of 78 school years of instruction annually due to time spent "preparing for, attending, and documenting their annual meeting with each disabled child's parents to review and revise the child's education plan." Andrew Mollison, "Congress Rethinks Special Education; Hearings Begin on Improving Law," *Atlanta Journal and Constitution*, March 22, 2002.

51. The "compliance maze" is a term coined by researcher Kalman R. Hettleman to describe IDEA compliance in Baltimore's special education program. Hettleman, "Still Getting It Wrong," p. 12.

52. Ibid., p. 11.

53. Mollison.

54. Worth.

55. Mollison.

56. Hettleman, "Still Getting It Wrong"; and "Education Official Says State Has Met 90 Percent of Special Education Benchmarks," Associated Press State & Local Wire, March 26, 2002.

57. IDEA, sec. 1415(i)(2)(A).

58. Worth.

59. Ibid. See also Palmaffy, p. 9.

60. *Rowley* at 188.

61. The *Rowley* Court held, "We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred by all children covered by the Act." Ibid. at 202.

62. As one commentator observed, "A procedural focus may aid judicial officers lacking extensive expertise in special education." Beyer, p. 39.

63. Kotler, p. 376.

64. "The result [of IDEA's vague language] is often a quagmire of inconsistent and inequitable opinions." Ladonna L. Boeckman, "Bestowing the Key to Public Education: The Effects of Judicial Determinations of the Individuals with Disabilities in Education Act on Disabled and Nondisabled Students," *Drake Law Review* 46 (1998): 880.

65. Quoted in Palmaffy, p. 6.

66. Education legal scholars have pointed out that special education disputes are reaching courts with greater frequency. Thomas A. Mays and Perry Zirkel, "State Educational Agencies and Special Education: Obligations and Liabilities," *Boston Public Interest Law Journal* 10 (2000): 62.

67. Parent and attorney Martin A. Kotler observes, "Procedural protections all too often have been reduced to an empty ritual for all but the most educated and wealthy." Kotler, p. 341.

68. "There is a powerful minority of parents who know their legal rights and aren't afraid to exercise them. But most parents are at a decided disadvantage vis-à-vis school administrators. They don't know their rights, have little experience with the legal system, and tend to respect the decisions of professional educators." Palmaffy, p. 15.

69. Worth.

70. "Nationally, the LD explosion has been set off by affluent parents." Hettleman, "Still Getting It Wrong," p. 28.

71. Bolick.

72. Horn and Tynan, p. 31.

73. Palmaffy, p. 15.

74. *Rethinking Special Education for a New Century*, "Chapter Highlights," p. xix.

75. American Institutes for Research, *What Are We Spending on Special Education Services in the United*

States, 1999–2000? Advance Report 1, Special Education Expenditure Project (Washington: American Institutes for Research, March 2002), pp. 2–3. The $360.2 billion total education expenditure figure is AIR's estimate based on figures published in the *National Digest of Education Statistics*.

76. American Institutes for Research, p. 7. See also Don Soifer, "Almost 1 in 8 Students Labeled 'Disabled.'" *School Reform News*, April 2002.

77. Horn and Tynan, pp. 23–51, provide an excellent discussion of this issue.

78. See William T. Hartman, "Policy Effects of Special Education Funding Formulas," *Journal of Education Finance* 6 (Fall 1980): 135–59; and Joetta Sack, "Special Ed Designation Varies Widely across Country," *Education Week*, June 24, 1998, p. 1.

79. Frederick M. Hess, "Courting Backlash: The Risks of Emphasizing Input Equity over School Performance," *Virginia Journal of Social Policy & The Law* 6 (Fall 1998): 41.

80. IDEA, sec. 1401(26). Simply eliminating this statutory definition may partially alleviate the problem of overidentification by allowing the Department of Education to develop reasonable standards for diagnosis of SLD.

81. Quoted in Richard Lee Colvin and Duke Helfand, "Special Education in State Is Failing on Many Fronts," *Los Angeles Times*, December 12, 1999.

82. J. Lerner, "Educational Intervention in Learning Disabilities," *Journal of the American Academy of Children and Adolescent Psychiatry* 28 (1989): 326–31.

83. C. Snow et al., *Preventing Reading Difficulties in Young Children* (Washington: National Academy Press, 1998); and National Institute of Child Health and Human Development, *The Report of the National Reading Panel: An Evidence-Based Assessment of the Scientific Research Literature on Reading and Its Implications for Reading Instruction* (Bethesda, Md.: National Institute of Child Health and Human Development, 2000).

84 G. Reid Lyon et al., "Rethinking Learning Disabilities," in *Rethinking Special Education for a New Century*, pp. 259–87.

85. U.S. Department of Education, *Twenty-Second Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Washington: U.S. Department of Education, 2000), p. viii.

86. American Institutes for Research, p. 10.

87. Ibid., p. 11.

88. One recent study by the Abell Foundation revealed that the city of Baltimore, Maryland, alone was spending an estimated $28 million annually on IDEA procedural compliance and litigation costs. Hettleman, "Still Getting It Wrong," p. 20.

89. Worth; and Hettleman, "Still Getting It Wrong," p. 18.

90. Ibid., p. 20.

91. American Institutes for Research, p. 14.

92. Quoted in Worth.

93. Four national assessments of special education are currently in progress: the National Early Intervention Longitudinal Study, the Pre-Elementary Education Longitudinal Study, the Special Education Elementary Longitudinal Study, and the National Longitudinal Transition Study. All of these studies collect data on program activities (nature, amount, location of services, etc.); none of them reports academic results. The Government Performance and Results Act requires federal agencies to evaluate their programs, but again, the data collected focus on program activities, not educational progress. For more information about the lack of data on the academic achievement of children with disabilities, see American Youth Policy Forum and Center on Education Policy, p. 28.

94. E. A. Hanushek et al., "Does Special Education Raise Academic Achievement for Students with Disabilities?" National Bureau of Economic Research, working paper no. 6690, Washington, 1998, Table A2. A later study by E. A. Hanushek, John Kain, and Steve Rivkin showed gains of 0.1 standard deviations in math for one year of special education. See E. A. Hanushek, John Kain, and Steve Rivkin, "Inferring Program Effects for Specialized Populations: Does Special Education Raise Achievement for Students with Disabilities?" University of Rochester, Rochester, New York, photocopy.

95. Lyon et al., p. 272. See also S. W. Moody et al., "Reading Instruction in the Resource Room: Set Up for Failure," *Exceptional Children* 16 (2000): 305–16; S. R. Vaughn et al., "Broken Promises: Reading Instruction in the Resource Room," *Exceptional Children* 64 (1998): 211–25; and R. L. Allington and A. McGill-Franzen, "School Response to Reading Failure: Instruction for Chapter One and Special Education Students Grades Two, Four, and Eight," *Elementary School Journal* 89 (1998): 529–42.

96. Kalman R. Hettleman, "Still Fighting the Last

War," *Education Week*, April 17, 2002, www.edweek.org/ew/newstory.cfm?slug=31hettleman.h21. MSPAP data are available at www.mdk12.org/data/index.html. CTBS data are available at http://msp.msde.state.md.us.

97. See J. K. Klingner et al., "Outcomes for Students with and without Learning Disabilities in Inclusive Classrooms," *Learning Disabilities Research & Practice* 13 (1997): 153–61. See also N. Zigmond and J. M. Baker, "Concluding Comments: Current and Future Practices in Inclusive Schooling," *Journal of Special Education* 29 (1995): 245–50.

98. See Lyon et al., pp. 274–75.

99. For example, see Hettleman, "Still Getting It Wrong"; and Andrew P. Dunn, "What's Wrong with Special Education?" *Education Week*, May 17, 2000, pp. 36, 39, www.edweek.org/ew/ewstory.cfm?slug=36dunn.h19. See also Mark Kelman and Gillian Lester, *Jumping the Queue: An Inquiry into the Legal Treatment of Students with Learning Disabilities* (Cambridge, Mass.: Harvard Univer-sity Press, 1997).

100. Descriptions of individual cases showing instances of ineffective special education programs can be found in many of the published reports and evaluations. For example, see Worth; and Dunn.

101. "Notwithstanding the procedural protections of the Act, scholars and parents are virtually unanimous in criticizing the manner in which the Act functions." Kotler, p. 341.

102. Rosenbaum, p. 160.

103. Institute for the Transformation of Learning, *Florida A+ Opportunity Scholarship Program and McKay Scholarships for Students with Disabilities Program* (Milwaukee: Marquette University, Institute for the Transformation of Learning, Office of Research, December 2001), www.schoolchoiceinfo.org/img/pdf/Florida.pdf.

104. Susan Bowers, U.S. Department of Education, Letter on Florida's McKay Scholarship Program, n.d., www.edlaw.net/service/fla_voucher.html.

105. The John M. McKay Scholarships for Students with Disabilities Program, Fla. Stat., secs. 229.05371(1), (2)(a).

106. Ibid., sec. 229.05371(6)(a). Emphasis added.

107. Rick Keller, Testimony before the Education Reform Subcommittee of the House Committee on Education and the Workforce, Hearing on Special Education Paperwork Burden and Accountability System, 107th Cong., 2d sess., May 2, 2002.

108. "Under the IDEA and its implementing regulations, the federal government provides financial assistance for the education of children with disabilities to states that subject themselves to the IDEA's requirements." Thomas A. Mays et al., "State Educational Agencies and Special Education: Obligations and Liabilities," *Boston University Public Interest Law Journal* 10 (2000): 63.

109. American Institutes for Research, p. 15.

110. Ibid., p. 13.

111. Seligman, pp. 780–81.

112. Professor David L. Kirp remarks on the institutional rigidity of the public education establishment: "To one unfamiliar with the ways in which schools operate, [such an] array of legal, political and pedagogical criticism might signal imminent and perhaps revolutionary change in schooling practice, precipitated by political crisis, voluntary school action, or judicial intervention. Yet change, though devoutly to be wished, will not occur so readily." Quoted in Kotler, p. 365.

113. Kotler, p. 376.

114. Boeckman notes, "Scholars within the field of pedagogy do not agree what is the 'best' structure for special education." Boeckman, pp. 872–73. Kotler also remarks, "The dispute over programming for autistic children serves to illustrate the institutional shortcomings of educational agencies as decision makers." Kotler, p. 367.

115. See ibid., p. 372.

116. Attorney Steven Marchese refers to the "financial and emotional cost of formal adjudication" of IDEA disputes. Steven Marchese, "Putting Square Pegs into Round Holes: Mediation and the Rights of Children with Disabilities under the IDEA," *Rutgers Law Review* 53 (2001): 338.

117. Of course, the incentives of individual parents to have their children identified may be strengthened by a reform that offers a portable benefit. Nonetheless, choice-based reform should reduce overidentification overall because school districts will no longer have any financial inducement to use their bureaucracies to support incorrect diagnoses.

118. Worth.

119. Brian DeBose, "Council Seeks to Rein in Agencies' Spending," *Washington Times*, March 5, 2002.

120. "Special Ed Run Amok," editorial, *Washington Times*, March 22, 2002.

121. Justin Blum, "D.C. Seeks Investigation of Special-Ed Referrals," *Washington Post*, March 7, 2002.

122. Worth.

123. Deborah Simmons, "School Choice: Why Vouchers and Charter Schools Are Needed," *Washington Times*, March 22, 2002.

124. Quoted in Vaishali Honawar, "Special-ed Charter Schools Eyed," *Washington Times*, March 10, 2002.

125. Worth.

126. Simmons.

127. *The Directory for Exceptional Children*, 14th ed. (Boston: Porter Sargent, 2001–02), www.portersargent.com.

128. U.S. Department of Education, p. A-93. Public school districts have placed more than 121,000 students in private facilities or provide services to disabled children who are home or hospital bound. At least 40,000 special education students attend private schools at public expense. See Janet R. Beales and Thomas F. Bertonneau, "Do Private Schools Serve Difficult-to-Educate Children?" Mackinac Center for Public Policy, Midland, Mich., 1997.

129. Ibid., p. A-93.

130. Lewis M. Andrews, "More Choice for Disabled Kids: Lessons from Abroad," *Policy Review*, April and May 2001, pp. 39–50.

Published by the Cato Institute. Policy Analysis is a regular series evaluating government policies and offering proposals for reform. Nothing in Policy Analysis should be construed as necessarily reflecting the views of the Cato Institute or as an attempt to aid or hinder the passage of any bill before congress. Contact the Cato Institute for reprint permission. Additional copies of Policy Analysis are $6.00 each ($3.00 each for five or more). To order, or for a complete listing of available studies, write the Cato Institute, 1000 Massachusetts Ave., N.W., Washington, D.C. 20001, call toll free 1-800-767-1241 (noon - 9 p.m. eastern time), fax (202) 842-3490, or visit our website at www.cato.org.

BEST COPY AVAILABLE

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

NOTICE

Reproduction Basis

[X] This document is covered by a signed "Reproduction Release (Blanket)" form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.

[ ] This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").